

Before The  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

**Rate Adjustment Due To Extraordinary  
Or Exceptional Circumstances**

**Docket No. R2013-11**

**REPLY COMMENTS OF THE PARCEL SHIPPERS ASSOCIATION**  
(December 6, 2013)

These comments reply to the initial comments of United Parcel Service (UPS).<sup>1</sup> UPS asks the Commission to “consider adjusting the allocation of total institutional costs between Market-Dominant and Competitive Products to decrease the institutional cost burden currently imposed on Market-Dominant Products.” UPS Comments at 3-4. UPS further suggests this should be done “[b]efore approving an above-cap increase on Market-Dominant mailers. . . .” *Ibid.* The Commission should not do so at this time. This course is not practical or necessary.

This expedited docket does not allow time for interested parties to consider and comment on the merits of the issue, which was raised just 29 days before the statutorily imposed deadline for a Commission decision. Nor does it

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<sup>1</sup> Initial Comments of United Parcel Service on Renewed Exigent Request of the United States Postal Service, November 26, 2013 (UPS Comments).

allow the Commission the time to give the issue the consideration it deserves. Rather, as the Commission has advised in the past, the appropriate venue to consider this matter is a rulemaking proceeding.<sup>2</sup>

PSA agrees that getting the appropriate share right is very important and has said so in the past.<sup>3</sup> But is it necessary to consider this issue at all right now, even in a rulemaking proceeding?

The Commission performed a comprehensive review of the appropriate share requirement less than 18 months ago. There the Commission found:

The Commission's review includes consideration of the following relevant circumstances: the lack of evidence of a Postal Service competitive advantage; the market share analysis; changes to the market and competitors; historical competitive contribution levels; changes to competitive product offerings and the mail mix; and uncertainties. Taken together, the totality of these relevant

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<sup>2</sup>See Docket No. RM2012-3, Order Reviewing Competitive Products' Appropriate Share Contribution to Institutional Costs, August 23, 2012 at 24-25 (Order No. 1149) ("The Commission does not find it appropriate to adopt the Postal Service's proposal to grant itself the authority to find, on a case-by-case basis, that competitive contributions to institutional costs below 5.5 percent meet the appropriate share requirement based on prevailing circumstances. Postal Service Comments at 1, 3, 9-10. Section 3633(a) requires the Commission to set the appropriate share through 'regulations.' 39 U.S.C. 3633(a). Changing the appropriate share contribution level, even temporarily through another type of proceeding such as the Commission's ACD is more adjudicatory in nature than the general rulemaking proceeding suggested by the statute. Second, in addition to more closely following the text and intent of the statute, a rulemaking proceeding affords interested parties with a better opportunity for participation than in the annual compliance process or another Commission adjudicatory-type proceeding."

<sup>3</sup> See Comments of the Parcel Shippers Association, Docket No. RM2013-2, April 9, 2012 at 3. citing Order No. 1108 at 2 --

The appropriate share requirement is an important safeguard against unfair competition. It is important to get it right. As the Commission noted:

Given a very competitive marketplace where the Postal Service's market share is relatively small, setting the contribution level too high could adversely affect the Postal Service ability to compete. On the other hand, establishing a markup that is too low could give the Postal Service an artificial competitive advantage. Order No. 1108 at 2.

considerations support a conclusion that retaining the current appropriate share contribution level is appropriate at the current time.

Order No. 1449, *supra* at 24.

What has changed? UPS has not presented new information that would lead the Commission to reach a different decision today than it did just a few months ago. For example, in this proceeding, UPS points to (1) the Postal Service's financial position (UPS Comments at 5); (2) the decline in market-dominant mail volumes (*id.* at 4-5), (3) increased competitive revenue (*id.* at 6-10); and (4) the transfer of products to the competitive product list in support of its position (*id.* at 8). UPS presented these same issues in the last rulemaking.

PSA's mission is to foster competition in the parcel delivery market. It creates value for its members by promoting the best possible service at the lowest possible costs. <http://www.parcelshippers.org/content/about.html>. For competition to succeed it must be fair and PSA has consistently argued for a "level playing field" in the package delivery market.<sup>4</sup> There is no suggestion of unfair competition with respect to competitive products in this proceeding. UPS is the only competitor to file comments in this docket, and it does not allege that the Postal Service is predatorily pricing its competitive products or that it benefits

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<sup>4</sup> See Report on Universal Postal Service and the Postal Monopoly, Docket No. PI2008-3, Reply Comments of Parcel Shippers Association, August 4, 2008, at 2 ("PSA agrees that, as suggested by others, the Postal Service should be given substantial flexibility with respect to competitive products to adapt to market forces and compete on a level playing field."); see also Review of the Treasury Report, Docket No. PI2008-2, Comments of Parcel Shippers Association on Treasury Report, April 1, 2008, at 10 ("The overriding purpose of the PAEA in the competitive market was to level the competitive playing field: 'Our bill has the primary goal of allowing the Postal Service to continue to fulfill its universal service mission at a reasonable cost. To achieve this goal, the legislation establishes a modern system for regulating rates, gives needed flexibility to the Postal Service, and includes provisions to ensure a level playing field for the Postal Service and its competitors.' Statement for the Markup of the Postal Accountability and Enhancement Act House Committee on Government Reform by Rep. Henry A. Waxman (May 12, 2004).")

from a competitive advantage in the competitive marketplace.<sup>5</sup>

For the reasons stated, PSA urges the Commission not to revisit the appropriate share issue in this rate proceeding.

Respectfully submitted,

/s/

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<sup>5</sup> See Order No. 1449, *supra*, at 15 (“Finally, the Commission notes that one of the PAEA’s reforms was to make most of the United States’ antitrust laws applicable to the Postal Service. See 39 U.S.C. 409(e). The relevant federal antitrust agencies as well as private parties are now able to bring lawsuits against the Postal Service for predatory pricing and other antitrust violations. The Commission is not aware of any such antitrust-related action having been taken against the Postal Service since the initial appropriate share determination.”)